



## Final Regulation Agency Background Document

<b>Agency name</b>	Board for Opticians
<b>Virginia Administrative Code (VAC) citation</b>	18 VAC 100-20-54 18 VAC 100-20-81
<b>Regulation title</b>	Board for Opticians Regulations
<b>Action title</b>	Amending
<b>Document preparation date</b>	December 2, 2004

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

The purpose of the proposed action is to adjust fees as necessary in accordance with § 54.1-113 of the Code of Virginia (Callahan Act). Any other changes that may be necessary may also be considered.

### Statement of final agency action

*Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.*

On November 12, 2004, the Board for Opticians adopted final amendments to 18 VAC 100-20-54 and 18 VAC 100-20-81 of the Board for Opticians Regulations.

### Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

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The proposed regulatory action is mandated by the following sections of the Code of Virginia. To comply with these statutes, the Board evaluates its current and projected financial position, and determines the type of fees and amounts to be established for each fee that will provide revenue sufficient to cover its expenses.

Section 54.1-113. (Callahan Act) Regulatory boards to adjust fees – Following the close of any biennium, when the account for any regulatory board within the Department of Professional and Occupational Regulation or the Department of Health Professions maintained under §54.1-308 or §54.1-2505 shows expenses allocated to it for the past biennium to be more than ten percent greater or less than moneys collected on behalf of the board, it shall revise the fees levied by it for certification or licensure and renewal thereof so that the fees are sufficient but not excessive to cover expenses.

<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+54.1-113>

Section 54.1-201.4 describes each regulatory board's power and duty to "levy and collect fees for the certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the regulatory board and a proportionate share of the expenses of the Department..."

<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+54.1-201>

Section 54.1-304.3 describes the power and duty of the Director to "collect and account for all fees prescribed to be paid into each board and account for and deposit the moneys so collected into a special fund from which the expenses of the Board, regulatory boards, and the Department shall be paid..."

<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+54.1-304>

Section 54.1-308 provides for compensation of the Director, employees, and board members to be paid out of the total funds collected. This section also requires the Director to maintain a separate account for each board showing moneys collected on its behalf and expenses allocated to the board.

<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+54.1-308>

Sections 54.1-113, 54.1-201.4, 54.1-304.3, and 54.1-308 of the Code detailed in the Purpose Section of this document require the Department to:

- pay expenses of each board and the Department from revenues collected;
- establish fees adequate to provide sufficient revenue to pay expenses;
- account for the revenues collected and expenses charged to each board; and
- revise fees as necessary to ensure that revenue is sufficient but not excessive to cover all expenses.

To comply with these requirements, the Department:

- accounts for the revenue collected for each board distinctly.
- accounts for direct board expenses for each board, and allocates a proportionate share of agency operating expenses to each board.
- reviews the actual and projected financial position of each board biennially to determine whether revenues are adequate, but not excessive, to cover reasonable and authorized expenses for upcoming operating cycles.

- recommends adjustments to fees to respond to changes and projections in revenue trends and operating expenses. If projected revenue collections are expected to be more than sufficient to cover expenses for upcoming operating cycles, decreases in fees are recommended.

If projected revenue collections are expected to be inadequate to cover operating expenses for upcoming operating cycles, increases in fees are recommended.

Fee adjustments are mandatory in accordance with these Code sections. The Board exercises discretion in how the fees are adjusted by determining the amount of the adjustment for each type of fee. The Board makes its determination based on the adequacy of the fees to provide sufficient revenue for upcoming operating cycles.

The Board for Opticians has no other source of revenue from which to fund its operations.

### Purpose

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

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The intent of the proposed changes in regulations is to increase fees for applicants and regulants of the Board for Opticians (Board). The Board must establish fees adequate to support the costs of Board operations and a proportionate share of the Department of Professional and Occupational Regulation’s (Department) operations. By the close of the current biennium, fees will not provide adequate revenue for those costs. The Board has no other source of revenue from which to fund its essential functions required for public health, safety and welfare.

The Department receives no general fund money, but instead is funded almost entirely from revenue collected for applications, renewals, examination fees, and other fees. The Department is self-supporting, and must collect adequate revenue to support its mandated and approved activities and operations. Fees must be established at amounts that will provide that revenue. Fee revenues collected on behalf of the boards fund the Department’s authorized special revenue appropriation.

The ability of the board to continue to process applications in a timely and accurate manner increases the level of public safety and welfare by ensuring that only those applicants that meet or exceed the requirements set forth in the statutes and regulations are granted licenses, certificates, or registrations.

### Substance

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the “All changes made in this regulatory action” section.*

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The purpose of the proposed action is to adjust fees as necessary in accordance with § 54.1-113 of the Code of Virginia (Callahan Act). Any other changes that may be necessary may also be considered.

**Issues**

*Please identify the issues associated with the proposed regulatory action, including:*

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

*If there are no disadvantages to the public or the Commonwealth, please indicate.*

The primary issue for the proposed fee increase is the Department’s statutory requirement to comply with the Callahan Act.

The advantage of these changes is that the regulatory program will be able to continue to function in order to protect the public. The disadvantage is that these changes will increase the cost of the license to the regulated population; however, the impact of these changes on the income of the regulated population should not be of a great significance compared to level of income.

**Changes made since the proposed stage**

*Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.*

No changes have been made to the text of the proposed regulation since the publication of the proposed stage.

Section number	Requirement at proposed stage	What has changed	Rationale for change

**Public comment**

*Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.*

There was no public comment received during the public comment period following the publication of the proposed stage.

Commenter	Comment	Agency response

**All changes made in this regulatory action**

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.*

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale												
18 VAC 100-20-54.A.	NA	<p><b>18 VAC 100-20-54. Fees.</b></p> <p>A. The fee for examination or examinations shall consist of the combination of an administrative charge of \$10 (spectacle), \$25 (contact lens), and the appropriate contract charges. Examination service contracts shall be established in compliance with the Virginia Public Procurement Act (§11-35 et seq. of the Code of Virginia). The total examination fee shall not exceed a cost of \$300 to the applicant.</p> <p>The current administrative charge for the spectacle examination is \$10.00.</p> <p>The current maximum examination fee for the examination procured in accordance with the Public Procurement Act is \$300.00</p>	<p><b>18 VAC 100-20-54. Fees.</b></p> <p>A. The fee for examination or examinations shall consist of the combination of an administrative charge of <del>\$40</del> <u>25</u> (spectacle), \$25 (contact lens), and the appropriate contract charges. Examination service contracts shall be established in compliance with the Virginia Public Procurement Act (§11-35 et seq. of the Code of Virginia). The total examination fee shall not exceed a cost of <del>\$300</del> <u>1,000</u> to the applicant.</p> <p>The proposed administrative charge for the spectacle examination is \$25.00. This change is made to achieve consistency with the administrative charge for contact lens examination.</p> <p>The proposed maximum examination fee for examinations procured in accordance with the Public Procurement Act is \$1,000.00. The Board contracts with the American Board of Opticianry (ABO) for its written examination.</p> <p>The Board is proposing to raise the cap to ensure that any future examination costs that reflect increases in vendor charges that are established in accordance with the Virginia Public Procurement Act would be paid by the applicant and not subsidized by fees paid by licenses and would not require an additional regulatory review action. New York and Florida both use the ABO examination and have fees of \$585 and \$800, respectively.</p>												
18 VAC 100-20-54.C.	NA	<p>C. Application and examination fees must be submitted with the application for licensure.</p> <p>The following fees shall apply:</p> <table border="1" data-bbox="428 1843 930 1892"> <thead> <tr> <th>FEE TYPE</th> <th>AMOUNT DUE</th> <th>WHEN DUE</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>	FEE TYPE	AMOUNT DUE	WHEN DUE				<p>C. Application and examination fees must be submitted with the application for licensure.</p> <p>The following fees shall apply:</p> <table border="1" data-bbox="956 1843 1458 1892"> <thead> <tr> <th>FEE TYPE</th> <th>AMOUNT DUE</th> <th>WHEN DUE</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>	FEE TYPE	AMOUNT DUE	WHEN DUE			
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		Application for licensure by examination or out-of-state applicants	\$55	With application	Application for licensure by <del>examination</del> or out-of-state applicants	<del>\$55</del> <u>100</u>	With application
		Application for contact lens certification by examination or for out-of-state applicants	\$70	With application	Application for contact lens certification by <del>examination</del> or for out-of-state applicants	<del>\$70</del> <u>100</u>	With application
		Renewal	\$60	Up to the expiration date on the license with a 30-day grace period	Renewal	<del>\$60</del> <u>100</u>	Up to the expiration date on the license with a 30-day grace period
		Late renewal (in addition to renewal fee)	\$25	Up to 12 months after the expiration date on the license	Late renewal (in addition to <u>includes</u> renewal fee)	<del>\$25</del> <u>125</u>	<u>Up to 12 months</u> <u>Between 30 and 60 days</u> after the expiration date on the license
		Reinstatement	\$100	After 12 calendar months following the expiration date on the license	Reinstatement ( <u>includes renewal and late renewal fees</u> )	<del>\$100</del> <u>225</u>	After <u>12 calendar months</u> <u>60 days</u> following the expiration date on the license
		Duplicate wall certificate	\$25	With written request	Duplicate wall certificate	\$25	With written request
		<p>The current application fee for licensure is \$55.00.</p> <p>The current application fee for contact lens certification is \$70.00.</p> <p>The current renewal fee is \$60.00.</p> <p>The current regulations permit late</p>			<p>The proposed application fee for licensure is \$100.00.</p> <p>The proposed application fee for contact lens certification is \$100.00.</p> <p>The proposed renewal fee is \$100.00.</p> <p>The proposed fee changes are made to comply with § 54.1-113 of the Code of Virginia.</p> <p>The proposed regulations permit late</p>		

		<p>renewal for up to 12 months after expiration with reinstatement required after 12 months.</p> <p>The current fee for a duplicate wall certificate is \$25.00.</p>	<p>renewal for up to 60 days after expiration with reinstatement required after 60 days. All reinstatement applicants must meet current requirements. Therefore, the proposed change will ensure that practicing opticians remain competent to practice in a manner that will protect public health, safety and welfare without being overly burdensome on the licensee.</p> <p>The proposal deletes the fee for a duplicate wall certificate because wall certificates are no longer issued.</p>
18 VAC 100-20-81.A.	NA	<p><b>18 VAC 100-20-81. Reinstatement required.</b></p> <p>A. If a licensee fails to renew his license within 12 months after the expiration date on the license, the licensee must apply for reinstatement on a form provided by the board.</p> <ol style="list-style-type: none"> <li>1. Individuals for reinstatement shall continue to meet the standards of entry as set out in subdivisions 1 through 8 of 18VAC100-20-10.</li> <li>2. Individuals for reinstatement shall submit the required fee as set out in 18VAC100-20-54.</li> </ol> <p>The current regulations permit late renewal for up to 12 months after expiration with reinstatement required after 12 months.</p>	<p><b>18 VAC 100-20-81. Reinstatement required.</b></p> <p>A. If a licensee fails to renew his license within <del>12 months</del> <u>60 days</u> after the expiration date on the license, the licensee must apply for reinstatement on a form provided by the board.</p> <ol style="list-style-type: none"> <li>1. Individuals for reinstatement shall continue to meet the standards of entry as set out in subdivisions 1 through 8 of 18VAC100-20-10.</li> <li>2. Individuals for reinstatement shall submit the required fee as set out in 18VAC100-20-54.</li> </ol> <p>The proposed regulations permit late renewal for up to 60 days after expiration with reinstatement required after 60 days. All reinstatement applicants must meet current requirements. Therefore, the proposed change will ensure that practicing opticians remain competent to practice in a manner that will protect public health, safety and welfare without being overly burdensome on the licensee.</p>

**Family impact**

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability.*

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This proposed regulatory action is not anticipated to have any significant impact on Virginia's families.